



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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July 23, 2014

Applicant

ERIC S. AND PAMELA D. ERICKSON TRUST
2001 NW MCDANIEL ROAD
POWELL BUTTE, OR 97753

Agent

DIRK DURYEE
TYE ENGINEERING & SURVEYING, INC.
725 NW HILL
BEND, OREGON 97701

SUBJECT: Water Right Transfer Application T-11626

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11626. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0886 or Patrick.K.Starnes@wrdd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Analyst
Transfer and Conservation Section

cc: Transfer Application file T-11626
Jeremy Giffin, District 11 Watermaster (*via e-mail*)
William R. Tye, CWRE for the applicant

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**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11626, Crook County	)	PROPOSING APPROVAL OF
	)	CHANGES IN CHARACTER OF USE,
	)	PLACE OF USE AND PARTIAL
	)	CANCELLATION OF TWO WATER
	)	RIGHTS

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

Eric S. and Pamela D. Erickson Trust
2001 NW McDaniel Road
Powell Butte, Oregon 97753

Findings of Fact

1. On June 25, 2013, Eric S. and Pamela D. Erickson Trust filed an application to change the place of use under Certificate 81282. The Department assigned the application number T-11626.
2. On April 15, 2014, the applicant's agent, Dirk Duryee, notified the Department by e-mail that the applicants intend to cancel the underlying primary water rights and amend the transfer application to request an additional change in character of use, transferring the supplemental groundwater right to a primary water right, consistent with OAR 690-380-2320.
3. On May 21, 2014, the applicants amended the application to include a change in character of use and submitted new amended application maps to better describe the place of use and proposed "TO" lands.
4. On June 2, 2014, the applicants submitted voluntary cancellation affidavits to alleviate the conflict with layered water rights on the authorized "FROM" lands.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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5. Notice of the application for transfer was published on July 2, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On June 5, 2014, the Department mailed a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-11626 to the applicants. The Draft Preliminary Determination cover letter set forth a deadline of July 7, 2014, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
7. The portion of the right to be transferred is as follows:

Certificate: 81282 in the name of MOUNTAIN VIEW RANCH (perfected under Permit G-12764)
Use: SUPPLEMENTAL IRRIGATION OF 121.9 ACRES
Priority Date: AUGUST 5, 1994
Rate: 1.53 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the CROOKED RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Measured Distances
14 S	15 E	WM	31	2	SW NW	1990 FEET SOUTH AND 180 FEET EAST* FROM THE NW CORNER OF SECTION 31

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Acres
14 S	15 E	WM	31		NE NW	28.2
14 S	15 E	WM	31	1	NW NW	35.7
14 S	15 E	WM	31	2	SW NW	21.6
14 S	15 E	WM	31		SE NW	19.9
14 S	15 E	WM	31		NE SW	16.5
TOTAL						121.9

8. There is an apparent scrivener's error in the measured distance description for the authorized well location in Certificate 81282, indicated by the asterisk in the above table. Certificate 81282 was issued as a remaining right certificate from Transfer Application T-9678. Introduced into Certificate 81282 was a transcription error inaccurately describing the well distance *west* from the NW Corner of Section 31. Based on the accompanying map and final proof survey of the original right, the description of the well location should be listed as 180 feet **EAST** from the NW Corner of Section 31.

9. Transfer Application T-11626 proposes to change the character of use of Certificate 81282 from supplemental irrigation to primary irrigation. Consistent with OAR 690-380-2320, the applicants are requesting the cancellation of the underlying primary rights, and are further described below in Findings of Fact Nos. 18 and 19.
10. Transfer Application T-11626 also proposes to change the place of use of the above described right as a primary water right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Acres
14 S	15 E	WM	31		NE NW	28.2
14 S	15 E	WM	31	1	NW NW	35.7
14 S	15 E	WM	31	2	SW NW	18.7
14 S	15 E	WM	31		SE NW	21.3
14 S	15 E	WM	31		NE SW	18.0
TOTAL						121.9

Transfer Review Criteria (OAR 690-380-4010)

11. Water has been used within the last five years prior to the submittal of Transfer Application T-11626 according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A well, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11626.
13. The applicants indicated to the Department on May 21, 2014, that the primary surface water right from stored water under Certificate 75659 and the inchoate right portion under T-7393, originating Certificate 31032, have not been exercised on the authorized place of use within the last five years, but the supplemental right Certificate 81282 proposed in this transfer has been exercised. The applicants provided information establishing the extent to which the groundwater right (81282) has been used as the sole source for irrigation of the lands.
14. The evidence of use provided in Transfer Application T-11626 included an affidavit of use, dated aerial photographs and system delivery description providing additional evidence of the water use that is provided for irrigation on the authorized place of use listed above in Finding No. 6.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.
17. All other application requirements are met.

Partial Cancellation of certain Water Rights

18. On June 2, 2014, the applicants submitted an affidavit meeting the requirements of ORS 540.621 for partial cancellation of a water right as follows:

Certificate: 75659, in the name of WENDELL A. GROSS (perfected under Permit S-22911)

Use: IRRIGATION OF 88.9 ACRES

Priority Date: MARCH 11, 1954

Rate: 2.2 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: BIG HOUSTON LAKE, a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Gov't Lot	Q-Q
15 S	15 E	WM	6	4	NW NW

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Acres
14 S	15 E	WM	31		NE NW	21.1
14 S	15 E	WM	31	1	NW NW	21.0
14 S	15 E	WM	31	2	SW NW	16.7
14 S	15 E	WM	31		SE NW	15.5
14 S	15 E	WM	31		NE SW	14.6
TOTAL						88.9

19. On June 2, 2014, the applicants also submitted a notarized statement they will not be proving up on or making proof on the primary water right portion of Transfer Application T-7393. The change in place of use authorized under Special Order Volume 52, Page 502, allowed 33.0 acres under Certificate 31032 to be moved and is appurtenant to the applicant's lands. The applicants have abandoned any and all interest in this inchoate portion of the transfer. The parcel which the use of water under this water right for primary irrigation has ceased and is described as follows:

The portion of the inchoate water right that will not be proved up on is described as follows:

Transfer: T-7393 (Originating Certificate 31032), in the name of WENDELL A. GROSS (perfected under Permit S-22911)

Use: IRRIGATION OF 33.0 ACRES

Priority Date: MARCH 11, 1954

Rate: 0.82 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to

ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: BIG HOUSTON LAKE, a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Gov't Lot	Q-Q
15 S	15 E	WM	6	4	NW NW

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Acres
14 S	15 E	WM	31		NE NW	7.1
14 S	15 E	WM	31	1	NW NW	14.7
14 S	15 E	WM	31	2	SW NW	4.9
14 S	15 E	WM	31		SE NW	4.4
14 S	15 E	WM	31		NE SW	1.9
TOTAL						33.0

Determination and Proposed Action

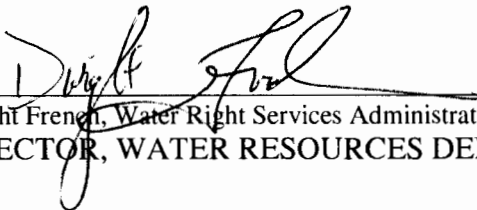
The changes in character of use and place of use proposed in Transfer Application T-11626 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. The abandoned primary water right portion under Transfer Application T-7393 and a portion of Certificate 75659 should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned rights will be cancelled.

If Transfer Application T-11626 is approved, the final order will include the following:

- 1. The changes in character of use and place of use proposed in Transfer Application T-11626 are approved. The portions of the rights that have been abandoned are cancelled.*
- 2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 81282 and any related decree.*
- 3. Water right certificates 81282, 75659 and the inchoate portion of T-7393 (originating primary Certificate 31032) are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellation.*
- 4. The former place of use of the transferred right shall no longer receive water under the right.*
- 5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 22 day of July 2014.


Dwight French, Water Right Services Administrator, for
DIRECTOR, WATER RESOURCES DEPARTMENT

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@ wrd.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.